

**CHAMBERS PRACTICES OF  
MAGISTRATE JUDGE KIYO A. MATSUMOTO  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201  
Chambers: Room 1227  
  
Telephone: (718) 613-2180  
Fax: (718) 613-2185  
Fax Page Limit: 5 pages**

Unless otherwise ordered, matters before Magistrate Judge Matsumoto shall be conducted in accordance with the following practices:

**I. ELECTRONIC CASE FILING (ECF)**

- A.** All documents must be filed electronically. Regardless of the district judge assigned, all documents directed to Magistrate Judge Matsumoto must be filed electronically via the court's Electronic Filing System pursuant to Administrative Order 2004-08.<sup>1</sup> ECF procedures are available from the district court's web site <http://www.nyed.uscourts.gov>. For questions regarding ECF you may call the Court's Docket Section at 718-613-2610. ECF training may be scheduled by calling Evelyn Levine at 718-613-2312.
- B. Notifications and orders by the court:** Attorneys will receive notifications from the court electronically. Hard copies will not be mailed to attorneys registered for ECF. Accordingly, attorneys are responsible for keeping their email addresses current with the Clerk's Office. Attorneys are responsible for ensuring that they are registered with the Clerk's Office to receive email notifications in each and every matter in which they appear before Magistrate Judge Matsumoto. For assistance, call 718-613-2610.
- C. Exemptions:** Litigants proceeding *pro se* are exempt from ECF requirements. Requests by attorneys for an exemption to the mandatory ECF policy must be submitted to Magistrate Judge Matsumoto within two weeks of the

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<sup>1</sup>Pursuant to Administrative Order 2004-08, dated June 22, 2004, the Board of Judges of the United States District Court for the Eastern District of New York has mandated that as of August 2, 2004, all civil cases other than *pro se* cases and all criminal cases must be filed by ECF. In accordance with the Administrative Order, all documents must be filed electronically.

date of the Initial Conference Order, and must set forth good cause hardship reasons which state the specific technological or other reason why counsel is not able to participate in ECF. Requests for exemptions from the ECF requirements will be considered after the attorney seeking the request has completed ECF training. Such requests will be granted only in limited circumstances.

## II. HARD COPIES

- A. **Generally:** Hard copies of all papers filed electronically and directed to Judge Matsumoto rather than the district judge, including motions, letters, and stipulations, must be provided to Chambers. **All such papers must be clearly marked “Courtesy Copy,” “Original Filed by ECF,” and “Assigned Document Number [print or type assigned document number].”** Two full sets of courtesy copies shall be sent to the chambers of Judge Matsumoto for all motions exceeding five pages, including exhibits. *See* § IV, *infra*, for further details.
- B. **Exception for filings containing non-text exhibits:** If the ECF document has voluminous or non-text exhibits, the exhibits may be filed in hard copy, provided that the ECF document entry indicates that exhibits are being filed in hard copy. The exhibits filed in hard copy should have a cover sheet containing the case caption, assigned judge(s) and docket number, and designating the documents as “Original Exhibits to [name of ECF filed document].”
- C. **Sealed documents** may only be filed in accordance with the procedures set forth in Administrative Order 2004-05.

## III. COMMUNICATIONS WITH CHAMBERS

- A. **Letters:** Except as provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel by the same means delivered to chambers, **and filed by ECF.**<sup>2</sup> All correspondence must include the (i) case name, (ii) docket number and (iii) initials of the judge(s) assigned to the case. A request for a conferences with the Court shall be made by a letter setting forth the specific issues requiring judicial intervention. Copies of correspondence between counsel shall not be sent to the Court.

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<sup>2</sup>Settlement position statements, which are used for purposes of facilitating Court-scheduled settlement conferences, need not be submitted via ECF, and may be submitted *ex parte*.

- B. Faxes:** Faxes not exceeding five pages, including cover sheet and attachments are permitted without prior authorization and must be filed by ECF. Faxes exceeding this length require prior authorization. Do not follow with hard copy unless otherwise requested.
- C. Telephone Calls:** Except as set forth below in Paragraph (D), telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at the number listed above. For questions about procedures not covered by these Individual Practices, please refer to the Federal Rules of Civil Procedure and the Local Civil Rules for the Eastern District of New York.
- D. Docketing, Scheduling, Calendar Matters and Deposition Disputes:** Attorneys should review the ECF docket prior to contacting chambers with questions regarding the docket and the scheduling of conferences. After consulting the ECF docket, questions regarding docketing, scheduling and calendar matters may be addressed to chambers by calling (718) 613-2180 between 9:00 a.m. and 5:00 p.m. Calls regarding new arrests, bail issues, arraignments and other matters handled by the magistrate judge on criminal duty should generally be directed to the Magistrate Clericals at (718) 613-2620.

**If parties encounter problems at a deposition,** they should first make every effort to resolve the dispute. If a satisfactory resolution cannot be achieved, the parties are directed to contact chambers immediately by telephone. The Court will either resolve the matter or instruct the parties to proceed with the deposition until such time that the Court can address the dispute. Under no circumstances should the parties discontinue the deposition without first attempting to contact the Court.

- E. Requests for Adjournment or Extension of Time:** The party requesting an adjournment of deadlines or a court conference must first confer with all other parties to discuss alternative, mutually agreeable dates. **All requests for adjournments of conferences or extensions of time must be made in writing, at least two business days in advance of the deadline or conference and must be filed by ECF with a clearly marked “courtesy copy” delivered to chambers** by fax or mail, and must state (1) the original date; (2) the reason for the request; (3) how much additional time is needed; (4) the number of previous requests for adjournment or extension by either party and whether these previous requests were granted or denied; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

If the request is for an adjournment of a court conference, absent an emergency,

the adjournment request shall be made at least two business days prior to the scheduled appearance. **Do not call chambers to request an adjournment of a court date except in an emergency.**

#### IV. MOTIONS

- A. **Discovery or Other Non-Dispositive Motions:** Pursuant to Local Civil Rule 37.5, parties must make a good-faith effort to resolve discovery disputes, including contact either by telephone or in person, before making a motion, and must report the results of that effort in submitting a letter motion pursuant to this rule. Discovery or other non-dispositive motions may be made by letter motion, pursuant to Local Civil Rules 37.1 and 37.3. No premotion conference is required. A response must be served and filed within three business days of receipt of the letter motion, unless otherwise directed by the Court. Replies are not permitted unless specifically authorized.
- B. **Motions on Notice and Premotion Conferences:** Although parties are encouraged to make discovery motions by letter pursuant to Local Rule 37.3, other motions may be made on notice pursuant to Local Rule 6.1. A premotion conference with the Court is required before the filing of a motion on notice. The moving party shall submit a letter setting forth the basis for the motion; a response shall be submitted within three business days. Replies are not permitted unless specifically authorized.
- C. **Dispositive motions:** Dispositive motions (e.g. motions to dismiss pursuant to Fed. R. Civ. P. 12, to change venue, to amend pleadings and for summary judgment) must be made to the presiding district judge, in accordance with his or her individual rules, unless the parties have consented to refer the case to Magistrate Judge Matsumoto for all purposes, including the entry of judgment.
- D. **General Practices For Motions On Notice Made to Magistrate Judge Matsumoto**
  - 1. **Service and filing.**
    - a. No motion papers shall be filed until the motion has been fully briefed.
    - b. Subject to Court approval, the parties are to propose their own briefing schedule. No changes in the approved schedule may be made without prior Court approval. Approval may be given at the pre-motion conference or by subsequent letter. No party is to serve any motion papers prior to obtaining Court approval for the

schedule.

- c. The original moving party shall be responsible for filing all motion papers (via ECF) once fully briefed. Such party shall also file a letter specifying each document filed in the motion package. The opposing party is responsible for providing the movant with a PDF version of opposition papers, either by email or by mailing a 3.5" diskette or CD. The movant is further obligated to furnish to chambers **two full sets** of courtesy copies of the motion papers together with a cover letter specifying each document in the package. A copy of the cover letter shall be sent to the assigned district judge and to opposing counsel. The Notice of Motion shall not contain a return date, but rather shall state that the return date will be set by the Court.

2. **Memoranda of law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions on notice are limited to 25 pages (excluding tables of contents and authorities), and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Memoranda must set forth the points and authorities relied upon in support of or in opposition to the motion, and must be divided, under appropriate headings, into as many parts as there are points to be determined. Case citations must contain pinpoint cites to specific page references. All memoranda must use one-inch margins, double spacing, and 12-point font. No letter briefs shall be permitted. **Any memoranda of law not complying with the requirements set forth herein may be returned.** See also Local Civil Rule 7.1.

- E. **Oral Argument:** Unless oral argument was previously scheduled, parties may request oral argument by letter at the time the fully briefed motion is filed. The Court will determine whether oral argument will be heard and, if so, will advise counsel of the argument date.

Once scheduled, oral argument may be adjourned with the consent of all parties, provided that the Court is notified in writing no later than one week prior to the scheduled argument.

- F. **Motions for Admission *Pro Hac Vice*:** A motion for admission *pro hac vice*, together with a proposed order admitting the attorney *pro hac vice*, shall be served and filed. Although there is no need to file a memorandum of law, this motion must comply with the Local Civil Rules for admission *pro hac vice*. These motions shall be on submission. If any party objects to the motion, opposition papers must be served and filed within three days after the motion is

filed.

- G. Motions to Withdraw as Attorney of Record:** Any applications to withdraw as attorney of record must be made pursuant to Local Civil Rule 1.4 and should be addressed to the assigned magistrate judge.
- H. Routine Applications Handled by the Assigned Magistrate Judge:** Motions for extensions of time to serve, answer, or file amended pleadings are handled by the assigned magistrate judge, as are “so ordering” stipulations amending pleadings, transferring venue or remanding to state court. Applications to “so order” confidentiality/protective orders and subpoenas are likewise addressed to the assigned magistrate judge, as are motions to quash subpoenas.
- I. Exception:** Nothing in these individual rules should be construed to require a premotion conference for motions pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A), and such motion should be filed when made.

## **V. PRETRIAL PROCEDURES**

- A. Joint Pretrial Orders in Civil Cases where Parties Consent to Trial before a Magistrate Judge:** Unless otherwise ordered by the Court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, which shall include the following:
  - 1. The full caption of the action.
  - 2. The names, addresses (including firm names), telephone and fax numbers of trial counsel.
  - 3. A brief statement by plaintiff as to the basis of subject matter jurisdiction and a brief statement by each party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
  - 4. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
  - 5. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

6. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
7. Any stipulations or statements of fact or law which have been agreed to by all parties.
8. A schedule by each party designating names and addresses of fact and expert witnesses whose testimony is to be offered in its case in chief, and possible witnesses whose testimony may be offered only for impeachment or rebuttal purposes, together with a brief narrative statement of the expected testimony of each listed witness. Only listed witnesses will be permitted to testify except when prompt notice has been given, and good cause is shown.
9. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
10. A schedule by each party designating all exhibits to be offered in evidence and if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only in rebuttal. Parties are expected to resolve before trial all issues of authenticity, chain of custody and related issues.

The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. **Failure to object in the pretrial order waives all objections at trial, except objections as to relevance.**

**All exhibits must be pre-marked for the trial and exchanged with the other parties at least ten days before trial.** A courtesy set of exhibits should be provided to the trial judge. Where exhibits are voluminous, they should be paginated and placed in binders with tabs. Only exhibits listed shall be offered in evidence except when prompt notice has been provided, and good cause and a lack of prejudice are shown.

**B. Filings Prior to Trial in Civil Cases:** Unless otherwise ordered by the Court, each party shall file the following 15 days before trial:

1. Proposed *voir dire* questions, proposed jury charges and proposed verdict

forms. Jury charges should be limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the Court. When feasible, in addition to a written version, these materials should be provided on a 3.5" diskette or CD in PC Word Perfect format;

2. By claim, a detailed statement regarding damages and other relief sought;
3. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element.
4. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and
5. A pretrial memorandum shall be submitted unless otherwise ordered by the Court.

**C. Procedures at Trial:**

1. *Voir dire*: The court will conduct all *voir dire*.
2. Witnesses: No later than the end of each trial day, counsel must notify each other and the court of witnesses to be called the following trial day.
3. Sidebars: Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time.

**VI. POST TRIAL PROCEDURES**

In non-jury trials, parties shall file proposed findings of fact and conclusions of law no later than 10 days after the conclusion of trial. No responses to such submissions shall be permitted.

*Revised as of January 23, 2006*